

### **REMARKS**

In the present application, claims 1, 4, 5, 7-18, 20, 22, and 24-27 are currently pending. Claim 1 is amended. No new matter is presented. In view of the above amendments and the following remarks, Applicants respectfully request that the rejection of claims 1, 4, 5, 7-18, 20, 22, and 24 be withdrawn and a notice of allowance be issued.

### **CLAIM REJECTIONS UNDER 35 USC §102**

Claims 1, 4, 5, 7-8, 10-12, 14, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith. (U.S. Patent 5,092,893). The Examiner takes the position that Smith discloses all the features recited in claims 1, 4, 5, 7, 8, 10-12, 14, 15, 17, and 18. Applicants respectfully traverse this rejection.

Smith discloses a vertebra structural implant for connecting two or more vertebral bodies in axial and lateral directions having implant plates attached to opposing sides of the spinal column by studs with a cross brace between the implant plates to prevent slipping or rotating of the vertebrae being stabilized. The implant has openings with curved lips and the studs have spherical surfaces and fit freely through the openings to prevent angular misalignment between the studs and the plates to lessen stress on the studs. The implant has grooved lock washers and the cross brace has grooves which mate with grooves in the implant plates to lock the plates in position relative to the studs and to each other.

It is respectfully submitted that Smith fails to teach or suggest all the features recited in independent claim 1. Specifically, it is submitted that Smith fails to teach or suggest at least the feature of the artificial facet joint comprising a first and second set of

cups, the first set of cups being configured to articulate with a left and right inferior halves of the facet joint and the second set of cups being configured to articulate with left and right superior halves of the facet joint . The support for this feature is provided on page 35, lines 26-20 of the specification. Thus, no new matter is presented.

In contrast to claimed invention, Smith discloses “a vertebra structural implant for connecting two or more vertebral bodies in axial and lateral directions having implant plates attached to opposed sides of the spinal column by studs with a cross brace between the implant plates to prevent slipping or rotating of the vertebrae being stabilized.” (See Abstract). In other words, the device disclosed by Smith does not provide any articulation as in the claimed invention. Rather, Smith discloses implants for fixating and causing fusion between the adjacent vertebra. The device of Smith actually teaches away from the present invention, since the present invention provides a artificial facet structure that mimics the motion of a natural facet joint, rather than fusing adjacent vertebra. Also, Smith does not teach or suggest cups that articulate with the inferior and superiors portions of the facet.

Therefore, it is respectfully submitted that Smith does not teach all the features of the claimed invention and the disclosure of Smith teaches away from the claimed invention. Therefore, Applicants respectfully request the withdrawal of the rejection of claim 1 under 35 U.S.C. 102(b).

Claims 4, 5, 7-8, 10-12, 14, 15, 17, and 18 are dependent upon claim 1. It is submitted that these claims recite patentable subject matter for at least the reasons mentioned above. Therefore, Applicants respectfully request that the rejection of claims 4, 5, 7-8, 10-12, 14, 15, 17, and 18 under 35 U.S.C. 102(b) be withdrawn.

**CLAIM REJECTIONS UNDER 35 USC §103**

Claims 9, 13, 16, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith. Applicants respectfully traverse the rejection of claims 28, 33, and 34.

Claims 9, 13, 16, 20, and 22 are dependent upon independent claim 1. It is submitted that Smith fails to teach or suggest all the features recited in the independent claim 1. Thus, dependent claims 9, 13, 16, 20, and 22 recite patentable subject matter for at least the reasons mentioned above. Therefore, Applicants respectfully request that the rejection of claims 9, 13, 16, 20, and 22 under 35 U.S.C. 103(a) be withdrawn.

**CONCLUSION**

In view of the above amendments and remarks, Applicants submit that claims 1, 4, 5, 7-18, 20, 22, and 24 are in condition for allowance. If the Examiner believes that the present amendments still do not resolve all of the issues regarding patentability of the pending claims, Applicants invite the Examiner to contact the undersigned attorney to discuss any remaining issues. If any additional fee is required for entry of the present amendments, please charge such fee to GMEDELAWARE 2 LLC Deposit Account No. 50-4131.

Respectfully submitted,

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GMEDELAWARE 2 LLC  
Customer Number: 12458  
Telephone: (610) 930-1800  
Facsimile: (610) 930-2042

By 

Bala K. Sundararajan  
Registration No. 50,900